



# ARIZONA LICENSED CONTRACTOR NEWSLETTER

## PROMOTING QUALITY CONSTRUCTION IN ARIZONA FOR 70 YEARS

August 2001

### A Note from the Director

#### State of Arizona

Jane Dee Hull, Governor  
Michael Goldwater, Director

#### Arizona Registrar of Contractors

This newsletter is an official publication of the Arizona Registrar of Contractors.

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This newsletter may also  
be viewed on our  
website:

[www.rc.state.az.us](http://www.rc.state.az.us)

Mission Statement: To promote quality construction by Arizona contractors through a licensing and regulatory system designed to protect the health, safety and welfare of the public.

#### Arizona Registrar of Contractors celebrates its 70<sup>th</sup> Anniversary

Created by an act of the state legislature, the Arizona Registrar of Contractors began issuing licenses in July of 1931. In the first month of operation, the first Registrar, B. L. Hammock and 2 clerical staff members, issued 96 licenses in three classifications; A - General Engineering, B - General Building, and C - Specialty. Today, our agency has 145 employees working in nine different geographical areas of Arizona and issues about 450 licenses each month covering more than 240 different license classifications.

**Some of our goals are to help ensure quality workmanship in construction by establishing and enforcing minimum standards for construction quality and to provide a low cost means to resolve disputes involving licensed contractors.** About 25% of all complaints received by the ROC are filed by licensed contractors against other licensed contractors. Usually, the ROC can resolve these complaints faster, easier and at less expense than the alternative civil court system. At any given time, only about 10% of licensed Arizona contractors have had a complaint on their record during the prior two years.

Contractors are among the many beneficiaries of regulation. We provide a consistent set of standards for contractors and educate consumers on how to effectively select a contractor and what to expect during the course of a construction project. **Our formal inspections allow all parties the opportunity to discuss the issues at hand and many times reach an equitable resolution.** When, in our opinion, a contractor's work complies with

minimum workmanship standards, the consumer is advised of this. More than 80% of the 9,000 plus complaints we receive each year are resolved without an administrative hearing.

In the past 70 years, since the inception of the ROC, significant changes in the building industry have occurred. New technology has improved productivity and kept construction affordable for consumers. The Registrar of Contractors has changed too, notably by taking advantage of computerization to process license applications and provide information to the public. The agency uses a computerized imaging system to process license applications in less than 4 days and actually issues a license in about 24 days. **We have recently activated an internet site that provides information on contractors' license numbers, classifications, bonding status, complaint history and the address of record.** Similar information is available through a computerized interactive voice response system by telephone and via a customer service representative in our Information Center.

Future plans include increasing our public information programs and supporting legislation that will better protect consumers and the industry against dishonest or unqualified contractors.

Michael Goldwater, Director  
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602-542-1525 ext. 7105

## Soil: The Other Half of the Foundation - Part I

*Understanding the stuff the house sits on may prevent cost overruns, callbacks and neighborhood gossip*

**BY ROBERT M. FELTON**



Most builders and architects are familiar with the problem of building settlement: the chimney that won't stop going down, the wall cracks that keep opening up, the older home that suddenly begins to exhibit movement for no apparent reason. Everyone in the building industry has a story about a fix that "shoulda done it," but didn't.

Preventing settlement problems begins with the recognition that the soil a foundation rests on is part of the foundation system; it's a building material, just like the 2x4 studs that frame the house. The fact that you can't go to a lumberyard and select this building material--that in most cases you're simply going to use whatever you happen to have--makes it especially important that you recognize differences among soil types, know something of the way soils respond to building loads and be able to identify potential problems.

### Differential settlement is the real enemy

A few things need to be understood about settlement. First, all houses settle. The amount may be so small as to be undetectable or may be so uniform as to leave no signs, but it unquestionably happens. Second, because of the natural and construction-related variations in soil properties, not every point on a foundation settles the same amount.

To avoid problems with entrances and utility connections, total settlement must be minimized. To avoid racking door frames and cracking walls, you must prevent differential settlement, the difference in settlement between various points on the foundation. The distinction between total and differential settlement is important. The Palace of Fine Arts in Mexico City, for instance, has settled several meters without significant distress to the structure and remains in service because the settlement has been uniform. The Leaning Tower of Pisa, on the other hand, is useless for anything but the Kodak moments of tourists.

### Elementary research can dig up most problems

Fortunately for homebuilders, the loads involved in most residential construction are relatively light. Following time-proven procedures and steering clear of **some** common misconceptions will keep you out of trouble in most cases.

For starters, you can learn a lot about soil conditions on your site by taking advantage of public-sector resources. The United States Department of Agriculture (USDA) has prepared soil maps for most of the country. Available at no cost at any local USDA branch office, these maps superimpose soil-type delineations over aerial photographs. By studying these maps and the soil descriptions that accompany them, you can find out information such as whether your site might have a high groundwater table or whether problematic soils--such as shrink/swell susceptible clays--might lurk beneath the surface.

Having been taken 30 years ago or more, aerial photos often reveal evidence of unsuspected development or manipulation of the site. An even better source for this type of information is a topographic map from the United States Geological Survey. This map may reveal abandoned cemeteries, farm ponds, wells or the long-forgotten town dump. A topographic map may be purchased for a few dollars at outdoor-sporting-goods stores or downloaded at no cost ([www.topozone.com](http://www.topozone.com)).

Don't forget to check with the local building and engineering departments, either; they often have a wealth of local information and experience, which they are usually happy to share. Developers who have built close by or homeowners on adjoining lots are other good sources of information.

### Virgin soil is not always virtuous

If your research unearths potential problems, that's the time to bite the bullet and consult an expert (see sidebar page 3). If you uncover no history of activity that may have left problems behind, that's probably good news, but there may still be things that need attention. "Virgin soil" isn't inherently problem-free. Muck (decomposed organic material), for instance, may have been undisturbed since Mother Nature deposited it, but building on it is always a bad idea.

Clay can also be troublesome. The strength of clay soils varies inversely with changes in moisture content; the greater the moisture, the weaker the soil. If clay materials underlie your site, the site plan must provide for positive drainage that will direct surface water away from the structure and paved areas; otherwise, water may penetrate and weaken the supporting soil. This is, in fact, a common cause of post-construction settlement problems. If site constraints make it impossible to direct runoff away

from the driveway, you should plan to provide lateral drains alongside the driveway to prevent water from accumulating beneath the pavement. Foundation drains must also be carefully designed to carry groundwater well away from the structure. These measures aren't cheap, but they cost less than repairs, ill will and neighborhood gossip.

*This is Part I of a two part series. Our next newsletter will contain the final portion of the article "Soil: the other half of the foundation" and a full color Shrink/Swell Potential map for the Tucson metro area provided by the N.R.C.S., Arizona State Office. The N.R.C.S. website is <http://www.az.nrcs.usda.gov/>.*

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#### NUMBER OF LICENSED CONTRACTORS AS OF JUNE 30, 2001

|             |              |
|-------------|--------------|
| COMMERCIAL  | 18,763       |
| RESIDENTIAL | 22,212       |
| DUAL        | <u>5,397</u> |
| TOTAL       | 46,372       |

## When should you call in a soils engineer?

Many builders and architects are reluctant to hire engineers to perform sub-surface investigations, and that's easy to understand: The cost of a house can go up a few thousand dollars. Despite the cost, there are circumstances where consulting a soils engineer is a wise investment.

- If you're wondering how on earth (to belabor the point) you're supposed to build a house on a lot with a steep slope, then you need an engineer to determine the soil properties and to evaluate the stability of the slope.
- Evidence of previous earthwork at the site, especially filling, requires careful investigation. The site may host buried organic materials, e.g., "muck"; debris such as demolition rubble or abandoned vehicles; or simply dumped fill. Any of these things can cause severe settlement problems.
- A local history of the presence of clay soils that are sus-

ceptible to shrinking and swelling with changes in moisture content also requires careful investigation and, usually, specialized design services and use of an out-of-the-ordinary foundation.



- Encountering groundwater or weak soil while excavating for foundations may indicate a potential for settlement or instability in the future. The problem area should be carefully delineated by an expert and remedied after close consultation.
- Consult your experience: If you're crossing your fingers and hoping the soil conditions won't cause a problem, you're probably right to be uneasy. Call in a specialist. To locate an engineer in your area, contact the American Society of Civil Engineers at (800) 548-2723. - R.M.F.

#### ARIZONA STATE CONTRACTING OPPORTUNITIES

By registering with the State Procurement Office, contractors will be notified of construction contracting opportunities. Sub-contractors should register both in the general and appropriate specialty contracting categories. State contracting opportunities are posted on the State Procurement Office website: <http://spras.ad.state.az.us> or call the main office number at (602) 542-5511.

#### ---SECURE YOUR LOAD ---

Contractors are reminded that state laws require you to properly secure loads on vehicles and violators may receive a traffic citation. This could be the least of your worries, however, if the falling debris causes a serious accident or fatality. In such a case the violation could be upgraded to a criminal offense against the driver and wrongful injury or death lawsuits would surely follow!

We encourage you to make this topic a part of your safety program and to notify employees and fellow contractors of the importance of this issue. It makes cents to think safe.





## Construction Defect Litigation - Part II

### *Breach of Contract and Breach of Express Warranty*

By Terry P. Esser

In the last publication, *The Implied Warranty of Good Workmanship*, I provided you the first in a series of articles examining the theories of recovery in Construction Defect Litigation. In this article, I provide you with an overview of two additional theories often relied upon by homeowners to recover against general contractors -- Breach of Written Contract and Breach of Express Warranty.

#### Breach of Written Contract

In most construction defect cases, the homeowner alleges a claim against the contractor for Breach of Written Contract. These claims are typically based on the following theories: (1) the general contractor failed to construct the home in compliance with the plans and specifications or city or county regulations; or (2) the contractor failed to construct the home in a workmanlike manner. In order to recover under either of these theories, the homeowner must allege, and subsequently prove to a judge or jury, that (1) an enforceable contract between the homeowner and the contractor exists; (2) the contractor breached the contract; and (3) as a direct result of the conduct by the contractor, the homeowner has suffered or continues to suffer damages.

In order for a homeowner to prove a claim for Breach of Written Contract, the homeowner must identify and establish the existence of construction defects, such as cracked concrete slabs, leaking windows, leaking roofs, or interior and exterior wall cracks. Next, the homeowner must identify and establish the cause of the defects. Finally, a homeowner must identify and establish the nature and extent of the damages caused to the homeowner by the defects. In order to establish each of these claims, the homeowner often retains the services of an Architect, a General Contractor or both. Armed with this expert testimony, a homeowner can present his or her case to either a judge or jury at mediation, arbitration or trial. A contractor is not without defenses.

A homeowner must file a Breach of Written Contract action against a contractor within six years from the date the homeowner discovers or should have discovered the defects. Under no circumstances can a homeowner file a Breach of Written Contract action more than eight years after substantial completion of the home or nine years after substantial completion of the home if a latent (i.e., hidden) defect is discovered during the eighth year. A home is considered substantially complete on the date the home is first used by the occupant, the date it is available for use by the occupant or the date of the final inspection. Thus, if a homeowner files a Breach of Written Contract action after any of these time frames, the contractor may be dismissed from the action and, in some instances, awarded reasonable attorneys' fees incurred in successfully defending the action.

A general contractor may also look to the contract for particular defenses. For example, the contract may contain a shorter time frame under which a homeowner must file an action. Other provisions of the contract may limit applicable warranties and remedies available to the homeowner in the event a lawsuit is filed.

#### Breach of Express Warranty

Another theory of liability upon which a homeowner can recover against a general contractor is the Breach of Express Warranty. An express warranty, in most cases, is an oral or written agreement under which the contractor assures the quality of workmanship and/or materials. Unlike the Implied Warranty of Good Workmanship, an express warranty is based in contract and therefore cannot be utilized as a theory of recovery by subsequent purchasers.

As in a Breach of Written Contract action, a contractor is not without defenses to a claim of Breach of Express Warranty. Typically, the terms of the contract will limit the time frame under which a homeowner can seek redress under an express warranty. For example, a common clause in a construction contract will provide that the contractor warrants that all work will be free from major structural defects for a period of two years from the date of closing. Under a two-year express warranty, if the homeowner does not report any major structural defects within two years from the date of closing, the contractor may successfully defend any subsequent lawsuit based on a theory of Breach of Express Warranty.

If, on the other hand, the homeowner reports a major structural defect within the two-year warranty period, the contractor has a contractual obligation to undertake to repair the defect. If the contractor fails to correct the defect or abandons all efforts to repair the defect, the homeowner can immediately pursue a claim against the contractor for Breach of Express Warranty.

If the terms of the express warranty provide no time limit under which the homeowner can seek redress, the homeowner must file an action within the same time frame as is allowed under a claim for Breach of Written Contract.

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## Arizona Historical Notes

The 10 oldest, active licensed contractors in the state are:

| <u>Company</u>                | <u>Lic. #</u> | <u>Class</u> | <u>Date Issued</u> |
|-------------------------------|---------------|--------------|--------------------|
| Phoenix Tent and Awning       | 002386        | C-03         | 07/01/1933         |
| Ralph Wilkens Co.             | 007714        | B            | 03/28/1946         |
| Goettl Air Conditioning Inc.  | 008489        | C-45         | 01/04/1947         |
| Reliable Roofing Co.          | 009517        | C-42         | 10/07/1947         |
| Jesus R. Lespron              | 009629        | B            | 11/10/1947         |
| Goettl Air Conditioning Inc.  | 008488        | C-39         | 01/18/1949         |
| Sellwell Home Improvement Co. | 012766        | B-03         | 10/06/1950         |
| Sellwell Home Improvement Co. | 012767        | C-42         | 10/06/1950         |
| Sears Roebuck and Co.         | 013509        | C-39R        | 08/15/1951         |
| Acme Construction Corp.       | 014188        | B            | 07/01/1952         |

The first 10 licensed contractors in the state in July 1931 were:

| <u>Company</u>          | <u>Lic. #</u> | <u>Class</u> |
|-------------------------|---------------|--------------|
| Sarber and Brewer       | 1             | B            |
| B. T. Hammock           | 2             | A            |
| Jay J. Garfield Bldg    | 3             | B            |
| Ed Johnson & Sons       | 4             | A            |
| M. H. Babby             | 5             | C            |
| J. N. Clifford          | 6             | B            |
| C.G. Mills & Sons, Inc. | 7             | A            |
| White & Miller          | 8             | A            |
| Triplett Bros. Const.   | 9             | B            |
| Skeels & Graham Co.     | 10            | A            |

List of ROC directors since the agency's inception.

| <u>Registrar</u>  | <u>Year</u>        |
|-------------------|--------------------|
| B. L. Hammock     | June 18, 1931 - 33 |
| H. C. Sparks      | 1933 - 41          |
| Morgan G. Pratt   | 1941 - 48          |
| Rufus S. Spoon    | 1948 - 59          |
| Presley L. Agnew  | 1959 - 60          |
| Allen H. Rhodes   | 1960 - 65          |
| Roy L. Thornbrugh | 1965 - 66          |
| K. G. Flickinger  | 1967 - 72          |
| James A. Vivian   | 1972 - 74          |
| John J. Kayetan   | 1974 - 79          |
| Aaron Kizer       | 1979 - 84          |
| David Talamante   | 1984 - 86          |
| Rhonda K. Davis   | 1986 - 87          |
| John O. White     | 1987 - 89          |
| Rhonda K. Davis   | 1989 - 91          |
| Michael Goldwater | 1991 - Present     |

## LEGISLATIVE UPDATE – 2001

The following is a list of bills of interest to the industry signed into law by the Governor this past legislative session. There may be additional legislation which has not come to our attention. Emergency legislation becomes effective immediately (indicated by an "E" after the chapter number), otherwise it becomes effective August 9, 2001 (90 days after the legislature adjourns). You can access these bills by going to the Arizona State Legislature web-site: [www.azleg.state.az.us](http://www.azleg.state.az.us).

**1. HB 2371 advertisements; contractors; consumer fraud - Chapter 78**

Requires persons who are exempt from the licensure requirements of the Registrar to disclose to the public that they are unlicensed by including the words "**not a licensed contractor**" in all advertising. Persons who are not exempt from the licensure requirements are subject to prosecution for a violation of the Consumer Fraud Act and the Attorney General may investigate and take the appropriate action. Specifies that a contractor's license shall have the acronym "**ROC**" printed before the license number.

**2. SB 1181 school facilities board; construction - Chapter 11E**

An emergency measure allowing the School Facilities Board to contract and procure directly for services and materials used to correct school facility deficiencies. Extends the date of the School Facilities Board's rulemaking and procurement code exemptions.

**3. SB 1468 mechanics' and materialmen's liens - Chapter 64**

States that lien priorities for site improvements on construction sites shall be attached when work first starts or materials are furnished unless there is a general contract for construction.

**4. HB 2425 design-build; cleanup - Chapter 227E**

Modifies various statutes regarding the procurement methods available to state and local government agencies for professional and construction services.

**5. HB 2355 water; sewer; construction procurement; exception - Chapter 77**

Stipulates that work provided by volunteers and donations made for water or sewer projects shall not be included in the total cost of the project for procurement purposes.

**6. HB 2541 state energy code; advisory committee - Chapter 340**

Establishes an energy code and a State Energy Code Advisory Commission to review and recommend changes to the state energy code.

**7. HB 2547 bids; estimates; recreational projects; exemption - Chapter 199**

Allows local government agents to construct various recreational projects with volunteer workers or workers provided by a nonprofit organization without advertising for bids.

## ARIZONA LICENSED CONTRACTOR

Registrar of Contractors  
800 W. Washington 6th Floor  
Phoenix, AZ 85007-2940



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## ADDRESS SERVICE REQUESTED

IF YOUR ADDRESS IS NOT  
CORRECT, YOU MUST NOTIFY THE  
REGISTRAR OF CONTRACTORS  
PURSUANT TO A.R.S. § 32-1122 B. 1. g.

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### ARIZONA REGISTRAR OF CONTRACTORS STATEWIDE OFFICES

VISIT OUR WEBSITE AT <http://www.rc.state.az.us/> or E-MAIL [webmaster@roc1.rc.state.az.us](mailto:webmaster@roc1.rc.state.az.us)  
24 HOUR AUTOMATED CONTRACTOR INQUIRY (602) 542-1525 – TDD (602) 542-1588

#### PHOENIX

##### MAIN OFFICE

800 W. Washington, 6<sup>th</sup> Floor  
Phoenix, AZ 85007-2940  
(602) 542-1525  
FAX (602) 542-1599

##### FLAGSTAFF OFFICE

2901 Shamrell Blvd., Ste. 100  
Flagstaff, AZ 86001-1829  
(928) 526-2325

##### GLENDALE REGIONAL OFFICE

17235 N. 75<sup>th</sup> Ave., Ste. E-175  
Glendale, AZ 85308-8692  
(602) 542-1525

##### KINGMAN OFFICE

519 E. Beale St., Ste. 140  
Kingman, AZ 86401-5918  
(928) 753-4220

#### LAKE HAVASU CITY OFFICE

1845 Mc Culloch Blvd., Ste. B-5  
Lake Havasu City, AZ 86403-5722  
(928) 855-2144

##### MESA REGIONAL OFFICE

2222 S. Dobson Rd., Ste. 101  
Mesa, AZ 85202-6483  
(602) 542-1525

##### PRESCOTT OFFICE

240 S. Montezuma St., Ste. 202B  
Prescott, AZ 86303-3028  
(928) 445-5710

##### SHOW LOW OFFICE

581 E. Old Linden Rd., Ste. C  
Show Low, AZ 85901-4819  
(928) 537-8842

##### SIERRA VISTA OFFICE

333 W. Wilcox, Ste. 104  
Sierra Vista, AZ 85635-1756  
(520) 459-5119

#### TUCSON REGIONAL OFFICE

400 W. Congress, Ste. 212  
Tucson, AZ 85701-1311  
(520) 628-6345

##### YUMA OFFICE

2450 S. 4th Ave., Ste. 117  
Yuma, AZ 85364  
(928) 344-6990

##### PART-TIME OFFICE: CALL FOR HOURS

##### BULLHEAD CITY OFFICE

3900 Frontage Rd., Ste. 4  
Bullhead City, AZ 86430-9376  
(928) 753-4220  
Mailing Address:  
519 E. Beale St., Ste. 140  
Kingman, AZ 86401-5918

##### Toll-Free Number:

If you are calling the Registrar of  
Contractors from within  
Arizona, but outside Maricopa County,  
dial  
**1-888-271-9286**